



**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA**

**BILL OF COSTS GUIDE
DECEMBER 2009**

This guide was prepared by the Office of the Clerk of Court to assist parties in properly filing Bills of Costs and associated documentation with this Court. This guide is not legal advice or legal authority and should not be cited as authority in any filing in this Court. Nothing in this guide will create or add to any rights, claims, or causes of action. This guide is subject to exception and modification and is to be used in conjunction with the Federal Rules of Civil Procedure and the Local Rules of this Court.

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INTRODUCTION

This guide has been prepared to assist parties in the preparation of bills of cost in this District. The procedure for taxing costs under Fed. R. Civ. P. 54(d) and the Clerk's authority to tax costs vary widely between district courts. The Clerk's Office encourages parties to review this guide thoroughly and consult all applicable law when preparing a bill of costs in the U.S. District Court for the District of Minnesota.

Federal Rule of Civil Procedure 54(d)(1), states that "costs—other than attorney's fees—should be allowed to the prevailing party." The costs that may be taxed are generally outlined at 28 U.S.C. § 1920.

In this District, Local Rule ("LR") [54.3\(c\)](#) prescribes the procedure for taxation of costs. Under LR 54.3(c)(1), a bill of costs must be filed within 30 days of judgment. Parties are then able to file objections and a response to any objections filed. LR 54.3(c)(2). Unless otherwise directed by the Court, the Clerk of Court will then tax costs. LR 54.3(c)(3). The Clerk's decision consists of a Cost Judgment, which states the amount of costs taxed against a party, and a Taxation of Costs Summary, which provides a brief explanation of the Clerk's decision to allow or deny the stated costs. Thereafter, any party may file a motion to review the Clerk's decision with the presiding judge. LR 54.3(c)(4).

The Clerk's authority to tax costs is limited by statute, rule, case law, and local practice. In general, the Clerk will deny costs that are beyond the Clerk's authority to tax or where the authority to tax such costs is unclear.

PROCEDURES FOR FILING BILLS OF COST

A. HOW TO FILE A BILL OF COSTS

1. Local Rule 54.3(c)

Local Rule [54.3\(c\)](#) outlines the procedure for taxing costs in this District. LR 54.3(c)(1) states that “a party seeking costs shall file and serve a verified bill of costs using the approved form.” The approved form is AO 133, which is available on the Court’s website at www.mnd.uscourts.gov/FORMS/court_forms.shtml.

2. Verified bill of costs

Under LR 54.3(c)(1), all bills of cost must be verified. Attached to the bill of costs should be copies of any vouchers, bills, canceled checks, or other documentation (i.e. explanatory memorandum or affidavit) showing the amount of the costs and/or their purpose.

Generally, an invoice is sufficient documentation of a cost. It is not necessary to submit multiple forms of documentation for a single cost.

❖ **Important:** The Clerk will generally not tax costs unless sufficient documentation is provided, including costs that were not objected to by the opposing party.

3. Filing the bill of costs

All parties who are filing electronically must file the bill of costs in CM/ECF, using the “Bill of Costs” event. All supporting documentation should be filed as attachments in that same event. More information on the [CM/ECF Procedures related to Bills of Cost](#) is provided below.

❖ **Important:** Redact all personal data identifiers, such as financial account numbers and tax identification numbers, from all documentation submitted in relation to a bill of costs in accordance with Fed. R. Civ. P. 5.2.

B. WHEN TO FILE A BILL OF COSTS

1. District Court costs

Under LR 54.3(c)(1), the party seeking costs must file and serve a the bill of costs “[w]ithin 30 days of entry of the judgment in the case.”

2. Appeal costs

Local Rule 54.3(c)(6) states:

The Clerk of Court will promptly enter any costs taxed in the mandate of the Court of Appeals under Fed. R. App. P. 39(d). Appeal costs taxable in the district court under Fed. R. App. P. 39(e) will be taxed in accordance with this rule, provided that a bill of costs or amended bill of costs is filed within 14 days of the issuance of the mandate of the Court of Appeals.

C. ONLY PREVAILING PARTIES ARE ENTITLED TO TAX COSTS

Under Fed. R. Civ. P. 54(d), costs “should be allowed to the prevailing party.” Generally, a party is considered a “prevailing party” when a judgment has been entered in its favor. There are circumstances, however, when it is not clear whether a party prevailed for purposes of taxing costs. If it is unclear whether the party who filed a bill of costs is a “prevailing party,” the Clerk may deny all costs and the party may file a motion to review the Clerk’s decision. See LR 54.3(c)(3)-(4).

D. CASES INVOLVING MULTIPLE PARTIES

In cases involving more than a single plaintiff and/or a single defendant, the Clerk will not award the same cost more than once.

Generally, where multiple prevailing parties or multiple losing parties are represented by the same counsel, it is assumed that they may be treated as a single party for purposes of taxing costs. If this is not the situation, a party should provide an explanation as to why the parties should be treated differently and how.

Where multiple prevailing parties or multiple losing parties are represented by different counsel, it is assumed they should be treated as separate parties for purposes of taxing costs. In this situation, the party filing the bill of costs or the opposing party should provide an explanation as to which costs are attributable to each party and how they should be apportioned.

❖ **Important:** If there are multiple parties involved and an insufficient explanation is provided as to how to apportion costs, the Clerk may deny all costs and the party may file a motion with the presiding judge to review the Clerk’s decision. LR 54.3(c)(3)-(4).

TAXABLE COSTS

Under 28 U.S.C. § 1920, the Clerk may tax the following as costs:

A. FEES OF THE CLERK, 28 U.S.C. § 1920(1)

1. Taxable fees of the Clerk

Taxable fees of the Clerk most commonly refers to the initial filing fee and/or appeal filing fee paid to the Clerk of Court. If the case was removed from state court, any filing fee paid by the prevailing party in state court may also be taxed. Any other fee paid to the Clerk of Court for the District of Minnesota may be taxed.

2. Documentation

There is no need to submit receipts for filing fees paid to the Clerk of this Court. For fees other than filing fees that were paid to the Clerk of Court, provide receipts for the cost or a reference to the applicable docket entry in the case. For fees paid to the clerk of another court, a receipt or canceled check should be submitted.

B. FEES OF THE MARSHAL, 28 U.S.C. § 1920(1)

Fees of the marshal may be taxed. This District follows Eighth Circuit precedent that only the fees of the U.S. Marshal may be taxed under 28 U.S.C. § 1920(1), and therefore, fees paid to special process servers, including county sheriffs, are not taxable as costs. *Cruess v. KFC Corp.*, 768 F.2d 230, 234 (8th Cir. 1985). See 28 U.S.C. § 1921 for an explanation of the U.S. Marshal fees.

C. FEES FOR PRINTED AND ELECTRONICALLY RECORDED TRANSCRIPTS NECESSARILY OBTAINED FOR USE IN THE CASE, 28 U.S.C. § 1920(2)

1. Trial or hearing transcripts are taxable by the Clerk if the transcript was:

- i. Procured at the direction of the Court;
- ii. Prepared pursuant to stipulation of parties to tax as costs; or
- iii. Needed for an appeal.

2. Deposition transcripts (printed or electronically recorded) are taxable by the Clerk if the transcript was reasonably necessary to the party's case in light of the particular situation at the time of its taking. In this District, the Clerk has authority to tax deposition transcripts when:

- i. The deponent testified at trial;
- ii. The deposition was admitted into evidence; or
- iii. The deposition was submitted in connection with an event that terminated the litigation (e.g., summary judgment).

- ❖ Important: The Clerk will generally *not* tax the costs of both an electronically recorded deposition transcript and the printed deposition transcript. In order to tax the costs for an electronically recorded and printed deposition transcript, the party taxing the cost must explain why the expenditures of both were necessary for use in the case.

If the deposition does not meet one of the categories above, provide an explanation as to why the transcript was reasonably necessary at the time of its taking.

3. If the deposition transcript cost is taxable, the following fees of the court reporter may be taxed:
 - i. Court reporter fees for attendance at and travel for depositions.
 - ii. Cost of the original transcript and one copy for a transcript if the prevailing party requested the deposition and incurred the stenographic costs.
 - iii. Cost of one copy if prevailing party did not request the deposition and did not incur the stenographic costs.
 - iv. Costs of copies of papers obtained as exhibits in the deposition.
 - v. Electronic media support (e.g., disk, CD-ROM).
4. The following fees of the court reporter are *not* taxable by the Clerk:
 - i. Cost of expedited copy produced solely for the convenience of counsel, unless prior court approval was obtained.
 - ii. Transcript used primarily for trial preparation or discovery.
 - iii. Attorneys' fees and expenses incurred while taking the deposition.
 - iv. Long distance phone charges for telephonic deposition.
 - v. Court reporter postage or delivery charges for a transcript.
5. Documentation to be provided:
 - i. Transcript and/or deposition invoices should be submitted, indicating:
 - a. The case name or number;
 - b. The party being deposed;
 - c. The date of the deposition; and
 - d. An itemized bill of the court reporter's fee.
 - ii. An explanatory memorandum or affidavit should be provided to:
 - a. Explain how each transcript was used or why it was necessary; and/or
 - b. Explain why an expedited transcript was necessary.

D. FEES AND DISBURSEMENTS FOR PRINTING, 28 U.S.C. § 1920(3)

Fees and disbursements for printing are typically taxed by the court of appeals in its mandate.

E. WITNESS FEES, 28 U.S.C. § 1920(3)

The allowable witness fees are set forth in 28 U.S.C. § 1821.

1. Taxable witness fees

- i. Statutory attendance fee, 28 U.S.C. § 1821(b).
 - a. The attendance fee is \$40.00 per day. 28 U.S.C. § 1821(b).
 - b. The attendance fee includes the time the witness was “necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance.” 28 U.S.C. § 1821(b).
- ii. Mileage, 28 U.S.C. § 1821(c)(2).
 - a. Mileage must be calculated at the rate for official government travel in effect at the time the travel took place. 28 U.S.C. § 1821(c)(2). Visit www.gsa.gov for the current and historical official privately owned vehicle mileage reimbursement rates.
 - b. Provide the date(s) of travel and the applicable mileage rate with the bill of costs.
- iii. Subsistence, 28 U.S.C. § 1821(d)(1).
 - a. A subsistence allowance may be paid to a witness “when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.” 28 U.S.C. § 1821(d)(1).
 - b. The subsistence allowance may not exceed the maximum per diem allowance for official government travel in effect at the time the stay took place. 28 U.S.C. § 1821(d)(2). Visit www.gsa.gov for the current and historical subsistence per diem allowances by geographical area.
- iv. Common carrier, 28 U.S.C. § 1821(c)(1).

The actual expenses of travel by common carrier must be substantiated by a receipt or other evidence of the cost.
- v. Other travel expenses, 28 U.S.C. § 1821(c)(3).

“Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt)” may be taxed. 28 U.S.C. § 1821(c)(3).

2. Non-taxable witness fees

- i. Fees and expenses of parties.
- ii. Fees paid to any witness, including experts, beyond the statutory daily attendance fee.
- iii. Fees and expenses paid to witnesses who do not testify at trial.
- iv. Fees and expenses paid to deponents when the cost of the deposition is not taxed by the Clerk.
- v. Witness expenses for rental vehicle.

F. FEES FOR EXEMPLIFICATION, U.S.C. § 1920(4)

Exemplification costs typically include the costs for producing a demonstrative aid as an exhibit.

The Clerk generally will *not* tax exemplification costs unless the prevailing party received prior permission from the Court that these costs may be taxed.

G. COSTS OF MAKING COPIES OF ANY MATERIALS WHERE THE COPIES ARE NECESSARILY OBTAINED FOR USE IN THE CASE, 28 U.S.C. § 1920(4)

1. In this District, the Clerk will tax the costs of copies that were:
 - i. Exhibits that are conventionally filed with the Clerk;
 - ii. The two courtesy copies required to be provided to the presiding judge under the Court's Civil CM/ECF procedures;
 - iii. Conventionally filed documents that were required to be served on the opposing party; or
 - iv. Documents that were required to be served on the opposing party and were conventionally served on an opposing party because the party did not have a CM/ECF account.
2. The Clerk will *not* tax costs of copies that were:
 - i. Obtained for discovery purposes;
 - ii. Retained by counsel for counsel's use; or
 - iii. Provided to clients.
3. Documentation
 - i. If copies are made by an outside service, a copy of the invoice should be submitted.
 - ii. The costs of in-house copying may be documented by billing records or other documentation.
 - iii. Any invoice or bill submitted should indicate or be attached to a document explaining:
 - a. The document copied, including its docket number;
 - b. The number of pages in the document;
 - c. The number of copies made;

- d. The per page rate; and
 - e. The total cost.
4. Examples for calculating copying costs of an eight-page motion with three pages of exhibits:
- i. When all parties have active CM/ECF accounts, the following copies may be taxed: two eight-page copies that are required to be provided to the presiding judge.
 - ii. If one party does not have an active CM/ECF account, the following copies may be taxed: two eight-page copies required to be provided to presiding judge; and one eight page copy that was sent to non-CM/ECF account holder.
 - iii. If the document was filed conventionally, the following copies may be taxed: one eight-page copy required to be served on opposing counsel; two eight page copies required to be provided to the presiding judge; and three pages of exhibits filed with the Clerk.

Important: The Clerk will *not* tax copy costs if it cannot be determined whether all or a specific number of copies claimed are taxable.

H. DOCKET FEES, 28 U.S.C. § 1920(5)

Under 28 U.S.C. § 1923(a), certain attorney and proctor fees may be taxed, including:

- 1. \$20.00 on trial or final hearing, including the entry of default judgment;
- 2. \$5.00 on discontinuance of a civil motion;
- 3. \$5.00 on motion for judgment and other proceedings on recognizances; and
- 4. \$2.50 for each deposition admitted into evidence.

To recover docket fees, the amount of the fee and the docket number to which the requested fee relates should be noted in an explanatory memorandum or affidavit.

I. COURT-APPOINTED SERVICES, 28 U.S.C. § 1920(6)

- 1. Court-approved services
 - i. Under 28 U.S.C. § 1920(6), the “[c]ompensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation serviced under [28 U.S.C. §] 1828” may be taxed.
 - ii. When the Court appoints an expert or interpreter, the Court may direct one or more of the parties to compensate the interpreter and ultimately order the compensation paid to be taxed as costs or the Court may direct that the taxed costs be used to reimburse the

Administrative Office of the United States Courts for providing such special interpretation services.

2. Failure to obtain court approval

Where the prevailing party procured interpretation or translation services without prior Court approval, costs will be assessed only for those expenses necessarily incurred. The party requesting costs has the burden of showing that the interpretation or translation services were necessary at the time the services were received.

J. COSTS ON APPEAL, FED. R. APP. P. 39(e)

1. Costs inserted in the Mandate under Fed. R. App. P. 39(d)

Under LR 54.3(c)(6), the “Clerk of Court will promptly enter any costs taxed in the mandate of the Court of Appeals under Fed. R. App. P. 39(d).” See Fed. R. App. P. 41 for more information regarding the Court of Appeal’s mandate.

2. Costs taxable in the District Court under Fed. R. App. P. 39(e)

- i. Under LR 54.3(c)(6), such costs will be taxed in accordance with the local rule, “provided that a bill of costs or amended bill of costs is filed within 14 days of the issuance of the mandate of the Court of Appeals.”
- ii. Appeal costs that are taxable in the district court for the benefit of the party entitled to costs under Fed. R. App. P. 39 are:
 - a. The preparation and transmission of the record;
 - b. The reporter’s transcript, if needed to determine the appeal;
 - c. Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
 - d. The fee for filing the notice of appeal.

NON-TAXABLE COSTS

The following costs are generally not allowed by the Clerk:

1. Travel and expenses of counsel, including investigation expenses;
2. Fees for computerized legal research;
3. Secretarial services, including word processing, typing charges, copy charges, and scanning charges that are incidental to an attorney’s services;
4. Paralegal and/or investigative services;

5. Prejudgment and post-judgment interest;
6. Mediation costs;
7. Fees for postage, delivery (including delivery services such as Federal Express), and notary;
8. Long-distance telephone calls and fax charges;
9. Damage surveys;
10. Accountant's expenses; and
11. Office overhead.

PROCEDURE AFTER COSTS ARE TAXED BY THE CLERK

1. Motion for review to the Court
 - i. LR 54.3(c)(4) states: "Within 14 days after the entry of the Clerk's decision, any party may file and serve a motion and supporting documents for review of the Clerk's decision. Within 14 days after being served with the motion for review, a party may file and serve a response. A reply brief may not be filed unless the Court otherwise permits."
 - ii. A motion for review may include materials that were not presented to the Clerk for review.
2. Payment for Costs
 - i. Once the Court has ruled on a motion for review or after the time for seeking review has expired, the amount of the cost judgment should be paid directly to the prevailing party.
 - ii. A party must file a satisfaction of judgment once the cost judgment has been satisfied. Costs are *not* processed through the Clerk's Office.

CM/ECF PROCEDURES RELATED TO BILLS OF COST

The following is the list of CM/ECF events, in order of their use, related to filing a Bill of Costs.

1. Bill of Costs

Use form AO 133. *See* LR 54.3(c)(1). All documentation, explanatory memoranda, or affidavits should be provided as attachments in the same event.
2. Objection to Bill of Costs

Use this event when a non-taxing party does not agree with the submitted Bill of Costs. *See* LR 54.3(c)(2).

3. Response to Objection to Bill of Costs

Use this event to file a response to an objection to bill of costs. *See* LR 54.3(c)(2).

4. Cost Judgment

- i. The Clerk files the Cost Judgment and attaches a Taxation of Costs Summary to explain the Cost Judgment. *See* LR 54.3(c)(3).
- ii. After a Cost Judgment is filed, an objecting party has 14 days to file a motion for review by the judge. *See* LR 54.3(c)(4).
- iii. If there is no motion for review filed, then payment should be rendered and a satisfaction of judgment filed by the taxing party.

5. Motion to Review the Clerk's Decision

Use the Miscellaneous Relief motion event and title it "Motion to Review Taxation of Costs." File the motion in accordance with LR 7.1 and the applicable CM/ECF filing procedures.